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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 215.

HARRIET T. JAMES, ADMINISTRATRIX OF CHARLES P. JAMES, DECEASED, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, APPELLEE.

REPLY BRIEF OF MR. BEACH TO THE BRIEF OF THE GOVERNMENT.

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Reply Brief of Mr. Beach to the Brief of the Government.

Appellant's brief was filed March 5 and the case called for argument March 12. The Government then asked further time, and, over appellant's objection, this was granted, the case being reassigned for argument on Monday, April 2. The Government's brief was filed April 4.

I.

Though having had the appellant's brief under consideration for thirty days, the Government, by a sort of *coup de main*, meets no one of appellant's propositions, but bases its entire contention on the assertion that section 714 did not apply to the court of which Judge James was a member.

True it is that, in developing this argument, the Government touches upon the character of that court as constitu-

tional or legislative; but this is done simply to enforce the main proposition, that section 714 can be availed of only by a judge of the Supreme Court of the United States or of one of the inferior courts ordained and established by Congress under the authority of the first section of the third article of the Constitution.

If the Government stakes the issue in this case on this interpretation of section 714, it raises a simple question of statutory construction, the solution of which is easily and clearly made against the Government's position.

Section 714 has only to be read to show how clearly it runs in favor of any judge of any court of the United States who can comply with its conditions.

It was for the benefit of any judge of any court of the United States who had held his commission as such for ten years and had passed the age of three score and ten.

The sole limitation upon courts of the United States that is involved is that they must be courts whose judges could hold their commisions ten years.

Clearly, therefore, it applies to all courts of the United States whose judges hold their commissions during good behavior and not for a limited term of years.

An elaborate and, it would seem, an entirely unnecessary attempt has been made by the Government to trace the legislative history of the passage of the act which, upon the revision, became section 714.

Such research is, even where there is any ambiguity and where the intention is in doubt, a poor method, at best, of ascertaining legislative intent.

And where, as here, there is no ambiguity and no room for construction, further to quote portions of the debate attending the passage of the bill is to do that which is not only useless, but which is directly violative of the canons of this court. In the Trans-Missouri Freight Association case (166 U. S., page 318) this court refers to the general acquiescence in the doctrine that debates in Congress are not appropriate

sources of information from which to discover the meaning of the language of a statute passed by that body.

"The reason is that it is impossible to determine with certainty what construction was put upon an act by the members of a legislative body that passed it by resorting to the speeches of individual members thereof. Those who did not speak may not have agreed with those who did; and those who spoke might differ from each other; the result being that the only proper way to construe a legislative act is from the language used in the act and, upon occasion, by resort to the history of the times when it was passed."

Moreover, the administrative interpretation of section 714 in the present case and in the case of several other retired justices of the supreme court of the District of Columbia, living and dead, runs directly counter to this fantastic theory of the Government.

The late Judge Wylie enjoyed the benefit of this section for more than twenty years; Judge Cox for a somewhat shorter time. Now living retired under this act are Chief Justice Edward F. Bingham and Judge Alexander B. Hagner, while from the Court of Appeals of the District of Columbia, Mr. Chief Justice Alvey and Mr. Associate Justice Morris have recently availed themselves of its provisions.

Indeed, proper confidence in the strength of this position should have compelled Government below to have set off the amount actually paid Judge James in his lifetime against the administratrix, and the same theory must drive Government to reclamation from the other retired judges, or their estates, of the moneys thus improvidently and prodigally paid them.

If the supreme court of the District of Columbia be, in any sense, a court of the United States (and this court has held it so to be in Embry *vs.* Palmer), and if the Revised Statutes must be treated as a legislative declaration by Congress of the statute law on the subjects which they embrace (as this court held in U. S. *vs.* Bowen, 100 U. S., 508), the original act from which section 714 was taken cannot even be referred to.

It requires more ingenuity to raise any ambiguity in the section than to answer it.

II.

The Government next (p. 10) is at some pains to inform this court that the District of Columbia was, in the act establishing the temporary and permanent seat of Government, indifferently styled district or territory; but, lest this court might be misled by the announcement of this well-known fact or might mistake sound for substance, there is a frank disclaimer of any reliance by the Government "upon any argument based upon nomenclature." Yet so attractive seems this line of composition that several pages of citation follow, from which it appears that the word "territory" once again occurred in another act and once was actually used in an opinion of this court! From all of which the conclusion of the Government is that "whether we call the seat of Government a district or a territory is not material to the present case" (p. 16).

III.

The Government (p. 22) is not "aware that the political status of the courts of the District of Columbia has ever been directly judicially decided;" but the Government also thinks "the case of United States *vs.* Dana *et al.* (Fed. Rep., vol. 68, p. 886), which originated in the United States district court for the southern district of New York, comes nearer to deciding the principle of the judicial distinction between the courts of the District of Columbia and the courts of the United States than any other recent decision that we know of."

It is not immediately apparent just what is meant by the "political status" of a court, whether in the District of Columbia or elsewhere in the United States, nor is light afforded by citing a case which "comes nearer to deciding the prin-

ciple of the judicial distinction between" a court there and somewhere else in the United States.

Presumably the thought concealed in this language is that no court has decided in what respect the supreme court of the District of Columbia differs from any other Federal court, and that the Dana case, in the opinion of the Government, will greatly aid this court in reaching a proper conclusion.

But the trouble with the Dana case and its inutility at this juncture is that this court has already overruled it in Benson *vs.* Henkel, 198 U. S., 1.

The writer has had recent and frequent occasion to examine the Dana case, and has been obliged to assail it in the very district in which it was decided and where it has been held in reverent esteem by sundry committing magistrates as a binding rule of conduct in proceedings for removal under section 1014.

The underlying and controlling principle of that case is, as will be seen on a careful reading of it, that the District of Columbia is not a district within the meaning of section 1014, while this court in Benson *vs.* Henkel, *supra*, has decided that the District of Columbia is such a district within the purview of that section.

Judge Brown's reasoning in the Dana case was, in effect, this:

Section 1014 was originally section 33 of the original judiciary act; the original judiciary act only contemplated removal from one Federal district in a State to another Federal district in the same or another State; the only change of section 33, to make section 1014 of the Revised Statutes, was to alter the words of the former "by this act" to the words "by law" in the latter. This, holds Judge Brown, changed not the view point of the fathers; and the mental purpose of the revisers was by him held to be exactly the same as that of the first Congress, neither having the District of Columbia in mind. It is interesting to note that one of the authorities he cites for this identity of meaning of the original act with

section 1014, R. S., is cited by this court as the ground for an exactly opposite conclusion—U. S. *vs.* Bowen, 100 U. S. 508.

IV.

After stating that no direct decision on the "political status" of the supreme court of the District of Columbia can be found, it is asserted (p. 44), with much rhetorical emphasis, that this court has decided it to be impossible "that a court of the United States can be established under article III, section 1, somewhere else than in one of the United States." "Any logician, if a lawyer," who should gainsay this or who should attempt to distinguish between the power of Congress over the Territories and in the District of Columbia is consigned to the limbo of appellant's counsel.

But in the brief of Government below occurred the statement that the United States Court of Claims is established under article III, section 1; and the language of Mr. Chief Justice Chase in Klein *vs.* United States, 13 Wall., 128, was then cited to show that it was one "of those inferior courts which Congress authorizes."

And if distinction be desired between the power of Congress in the Territories and in the District of Columbia, the Government should at least quote the Constitution correctly. The latter power is not, as is surprisingly stated at page 44 of the Government's brief, the power "to exercise exclusive *jurisdiction*," but the power "to exercise exclusive *legislation*."

This might be considered a typographical error were not the argument of Government inconsistent with such an hypothesis. And as the distinction has been covered in the main brief for appellant, further reply is deemed unnecessary.

V.

There are some other fleeting suggestions in the Government's brief to which extended notice cannot be accorded. One is the reference to Downes *vs.* Bidwell (pp. 38-39),

as if this court had there passed on the question here involved, while in fact it, *ex industria,* refrains from doing so. Another is the undoubted truism that a citizen of the District is not a citizen of one of the States, and still another that the ordinance of 1787 prescribed judicial tenure during good behavior, in the western wilderness, where the first court was a triumvirate with the joint power of legislating and deciding. Any analogy to the division of power into executive, legislative, and judicial existing at the seat of Government that can be drawn from any of these instances is too remote to have any practical value.

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Of Counsel for Appellant.

WASHINGTON, D. C., *April* 7, 1906.